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THE AMERICAN.

"The Perpetuation of American Freedom is our object; American Rights our motto; and the American Party our cognomen."

VOL. I. WASHINGTON, SATURDAY, SEPTEMBER 5, 1857. NO. 10.

THE TRIAL OF THE WASHINGTON ELECTION RIOTERS.

[FROM SUTTON'S REPORT.]

CRIMINAL COURT FOR THE COUNTY OF *WASHINGTON.*

JUDGE CRAWFORD, Presiding.

PHILIP BARTON KEY, ESQ., U. S. D. A.

COUNSEL FOR THE DEFENCE.

JOSEPH H. BRADLEY, SR., ESQ.
ROBERT E. SCOTT, ESQ.
VESPASIAN ELLIS, ESQ.
JOHN A. LINTON, ESQ.
WILLIAM J. MARTIN, ESQ.
JOSEPH H. BRADLEY, JR., ESQ.
DANIEL RATCLIFFE, ESQ.
EDWARD C. CARRINGTON, ESQ.

THIRTEENTH DAY.

TUESDAY, August 11, 1857.

SPEECH OF

ROBERT E. SCOTT, ESQ.

IN THE DEFENCE.

Mr. SCOTT. May it please the Court, gentlemen of the jury, my friend, Mr. Carrington, who addressed you yesterday, had but a limited task to perform. Employed on behalf of a single party, his discussion of this case was properly confined to such facts of it as bore directly upon his client. Mine is a broader duty; I have to speak to the whole case; and I much regret that the course of argument indulged in by the District Attorney puts me under the necessity of trespassing much more upon your patience, and consuming much more of the time of this Court than in my judgment the discussion of those topics which justly appertain to the merits would warrant. If it had been the purpose of the worthy gentleman to inflame your passions, and excite your odium against the parties accused as the responsible authors of the bloody tragedy, perhaps his remarks were well calculated to attain that end; but, I am obliged to say that, after listening with attention to all that he said, you have obtained a very imperfect idea of the defence which is meant to be insisted upon. Gentlemen, I may also be permitted to say that, according to my humble apprehension, you have obtained but an imperfect idea of the case of the prosecution.

We are arraigned here under an indictment alledging against these parties a particular offence. Now, in order to understand your duty, to enable you to render a just verdict in accordance with the law and the evidence, it is necessary that you should be informed of the precise nature of the charge, its scope, and its extent. You must be thus informed, to enable you to do justice to the United States. It is equally necessary that you should be thus informed, in order that you may appreciate the defence, and do justice to the accused. I had expected the District Attorney, who has had so much experience in matters of this kind, whose competency and ability no one will question, to have come before you with this indictment in his hand, explaining to you the precise nature and extent of its allegations, defining the scope of the enquiry legitimately to be made under it, and then with that precision which belongs to criminal prosecutions to call your attention to the particular parts of the voluminous testimony, under which he would ask the verdict that he demands at your hands. But, gentlemen, through the whole course of his remarks, he never thought it necessary to recur once to his indictment. So far as I know the indictment under which these parties stand arraigned has never yet been read to you, and I venture to affirm that, even now, at this stage of these proceedings, you are profoundly ignorant of the accusation you sit there to try. Instead of resorting to the precision of a rifle shot, the gentleman has fired a volley of musketry upon us. If his purpose was, as I have said, to excite passion, to inflame anger, and arouse indignation, he may have been as effectual as was that volley of the hired military fired into the innocent and unoffending crowd at Alston's corner. I will attempt, gentlemen, in some degree to supply this defect, and to do what it was the duty of the District Attorney to have done, to call your attention to the allegations of the indictment, and explain its scope, because it is necessary to do this to understand justly the grounds of our defence. What is this indictment? I will read it for your information.

"District of Columbia, county of Washington, to wit:

"1st. C. The jurors of the United States, for the county aforesaid, on their oath, present that Wm. Eggleston, Daniel Steward, Isaiah Steward, George Johnson, Wm. Sibley, William Garner, George Hines Charles Hurdle, Wm. Hurdle, Robert Slatford, Wm. Jones, David Lewis, Charles Spencer, Vanloman Johnson, Daniel Biddleman, Robert Cross, Dink King, James Wilson, Durbin Langden, George G. Wilson, Wm. B. Wilson, Middleton Birkhead, Michael Hoover, James Cross, John McDonald, Boney Ley, James Mcrse, Henry Gamble, Benjamin Hartzell, Charles A. Ashley, Mullony Cropp, George Hillery, John Wesley Woodward, Gregory Barnett, late of the county aforesaid, laborers, together with divers other evil disposed persons, to the number of ten and more, to the jurors aforesaid as yet unknown, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, with force and arms, at the county aforesaid, did unlawfully, riotously, routously, and tumultuously, assemble and meet together to disturb the peace of the United States in said county; and being so then and there assembled and met together, did then and there make a great noise, riot, tumult, and disturbance; and then and there unlawfully, riotously, routously, and tumultuously, remained and continued together, making such noise, riot, tumult, and disturbance for a long space of time, to wit, for the space of five hours and more then next following, to the great terror and disturbance, not only of the good citizens of the United States in said county, there and thereabouts inhabiting and being, but of all other good citizens of the United States in said county, passing and repassing in and along the public streets and common highways there, in contempt of the laws and against the peace and government of the United States."

This is the charge—that these persons met together for the purpose of disturbing the peace, and that they actually consummated that intention. There is no other count in the indictment. This is its only charge. It involves all the persons named in it in the same act, and charges them with the same offence. There is but one act and one offence, and under this accusation, these parties can be convicted but of one act and one offence; and that act and that offence must be one in which all who can be found guilty, must be proved to have participated. The indictment might have been framed in another way. It might have been framed so as to set out specifically, the act complained of, and the means by which it was charged to have been executed. If the act complained of, was the disturbance of the voters at the polls, it was competent for the prosecution to have alleged that fact in the indictment. If the act complained of was the obstruction interposed to the orders of the Mayor to have the polls reopened, it was competent to have alleged that in the indictment. If the act complained of was the getting of the swivel from the Navy Yard, and the use made of it afterwards, it was competent to have charged that in the indictment; and I humbly submit that, in all fairness, before these parties were arraigned here and put to their defence, this specification ought to have been made. If various acts are alleged to be committed by these parties, amounting to riots on that day, it was competent for the prosecution to have framed the indictment with several counts, covering each specific offence, and with an indictment thus framed, containing the several counts, it would have been lawful to give evidence to the jury touching each one of the offences. But, gentlemen, this indictment is not so framed, and we mean to insist, that under well settled principles of law, pertaining equally to the trial of civil and criminal cases, under a complaint alleging one single offence, the testimony on the part of the complainant must be necessarily confined to that offence. The purpose of an indictment, like a declaration in a civil case, is to give the opposite party notice of what is alleged against him. Fair play demands this: justice demands it; and it must appeal with irresistible force, and commend itself to the just consideration of every one that this should be so. Now, to illustrate what I desire you to understand, I will take the case of a civil action. A is indebted to B in three several promissory notes: each is a substantive, separate, and distinct cause of action. He is liable to be sued on one or all of them. B may sue him, and so frame his action as to put him upon his defence as to each one of the three at the same time; but to do this he must declare upon all three in his declaration; he must set out his cause of action upon each; he must give the party notice of the extent of his demand, so as to put him upon his defence. But if instead of embracing the three notes in the same declaration, he chooses to put in one only, every man knows that his recovery is confined to that one, and on the trial of his case his testimony must be restricted to the particular cause of action. Suing upon one note he cannot give evidence touching the other notes—all that belongs to those not put in suit being foreign to the issue submitted to the jury.

This rule prevails equally in criminal cases.—There are many offences that may be united in the same indictment and prosecuted together. If the prosecution desires to enquire into several offences those several offences must be set out in the indictment. The law requires that they shall be set out separately in distinct counts, and when the jury comes to be empanelled upon the trial of the case, it is allowable for the prosecution to give evidence touching each one of the several offences thus set out. But if several offences have been committed, and the indictment charges but one, as in the case of a civil action, the testimony must be confined to that one, and it is not allowable to give to the jury or let the jury hear evidence that belonged to the others. You will perceive, gentlemen, from the terms of the indictment as read to you that it is couched in general terms. It charges a meeting together for the purpose of disturbing the peace, not at the first precinct of the Fouth Ward—there is no such specific allegation—but a meeting together to disturb the public peace in this county, followed by an allegation simply that that purpose was consummated. Now, under this indictment, thus general in its terms, it was competent for the prosecution to give evidence of any act committed by these parties tending to show that at any time and at any place within the limits of this county, a riotous disturbance of the public peace had been committed by them.

It was competent for the prosecution to call witnesses to testify in respect to the alleged disturbances in the Seventh Ward, or at the Navy Yard, or at any other place within the proper jurisdictional limits. So it was. competent, under this general form, for the prosecution to select amongst the various alleged disturbances any one particular case, and make that the subject of the prosecution; but whilst this liberty is allowed to the prosecution, whilst the law tolerates this, it is required, and it is a rule necessary for the attainment of justice, that when the prosecutor gives evidence of a particular act alleged to constitute the offence charged, ever afterwards the case must be confined to that, and the prosecution must stand or fall, according to the election.

Now, gentlemen, the District Attorney undertook to prove to you from the testimony, that there had been various riotings on this famous first day of June. He undertook to prove to you that there had been a riot in the morning between the hours of nine and ten o'clock, and he demanded at your hands the conviction of certain of the parties for participation in that offence. He undertook to show that at the first precinct of the Fourth Ward, between the hours of nine and ten o'clock, a riot was committed, and that some of the parties in this indictment were participant in it. Not satisfied with resting his case there—not content with limiting the enquiry to the occurrences that belonged to the alleged morning riot, he calls your attention to what occurred at a subsequent period of that day, in the afternoon, and undertook to show by the evidence that there was another riot near the scene of the first one, in which other of the parties enumerated in the indictment were participating, and those others different from those who are alleged to have been concerned in the first riot. Not only that, gentlemen, but he undertook to show that there were in fact two separate and distinct riots in the afternoon, occurring in the presence of the military—one in front of the Market House, around the swivel, the distinct purpose and object of which was, not to interfere with the holding of the polls, not to interfere with the right of the voters to cast their votes there, but to oppose the Executive authority in its efforts to keep the peace—an offence distinct from the morning offence, having no connection whatever with it, and directed to another and a different purpose. He undertook to show that there was still another offence which consisted in opposition to the efforts of the Mayor to have the polls re-opened, committed at a different place from that, directed against the constituted authorities, the one being in front of the Market House, across the street, the other being at the polls, each directed to a different purpose, and participated in by different persons. Not content with that, gentlemen, he has introduced still another, to which he called your attention, in which he seeks to implicate the two Stewarts, being an act committed after those several disturbances to which I have referred were put an end to, in a different place, and at a different time, and directed, too, to a wholly different purpose. I refer to the alleged assault on the fugitive Irishmen by Daniel Stewart and Isaiah Stewart, which took place, according to my recollection of the testimony, neither about the Market House nor about the polls, but at some remote part of the city. Here, then, are four separate and distinct acts of alleged riot, occurring at different times, in different places, directed to different objects, charged to have been participated in, not by all of these parties at the same time, but by some one or the other of them, at different times, acting separately and apart from each other. Now, gentlemen, if it be true that this indictment alleges one offence, and but one—if it be true that in order to obtain a verdict of guilty against any or all of them, the prosecution must prove an offence participated in by them all, and if it be true that according to the rules of evidence the prosecution is restricted to proof of one offence and one only, how comes it that in the conduct of this case the jury have been addressed at large upon the subject of four several alleged offences, and they are asked to convict these parties, not under the accusation contained in the isdictment, but to convict them upon the address of the learned attorney, if they shall find from the evidence that they were severally implicated in the one or the other of these offences? How is it to be accounted for that under this special indictment, governed by the best settled rules of law, your patience has been so trespassed upon, the time of this court so occupied, in investigations that do not pertain to the case submitted to you? Gentlemen, this first day of June must ever remain a memorable era in the history of this city; and he who would write its history would fall very far short of performing the task of a faithful historian if he were to omit to record the events of this trial. On that day the blood of your fellow-citizens was shed on the public streets. Men admitted to be unconnected with these disturbances, to have had no participation whatever in these alleged riots, assembled at a public place for a public purpose, and a lawful purpose, inoffensive, unoffending, aye, one, at least, standing in his own doorway, were shot down and butchered in the presence of the civil authorities; and being thus butchered, they were left to welter in their blood uncared for by these authorities, themselves, as I have said, spectators of the deed, and, as I will prove before I close this address, the responsible authors of the murder. Left, I say, to welter in your streets in their own blood—the dead, the dying, the maimed, the wounded—to be cared for as chance should dictate, but without the superintending care of your city fathers; they, it seems, had quite another office to perform—to come back with their bloody instruments, and to assemble in some part of this building to riot over the deeds of their bloody doing. I say, gentlemen, the historian of this tragedy would record that fact. He would have, too, to record another and a more startling one—that although the homicide was committed in the blaze of day, up to this time there has been no judicial investigation into it; none whatever, save, I understand, in a single case [Mr. BRADLEY. Two.] of an inquest upon two of the parties, the finding of which has been disregarded. Is there another community, gentlemen of the jury, to be found in the broad expanse of this wide world—where civilization prevails, where Christianity is taught, where law abides—in which such things could be? The meanest man whose body is found dead within your jurisdiction, is entitled to an examination into the facts which show how he came by his death. The suicide is entitled to it; the drunkard, who falls a victim to his own excesses, the passenger through your streets who is struck down by a sudden visitation, all are entitled, in every Christian and civilized land where law is known, to a full, a free, an impartial investigation as to the cause of death. You have been told, gentlemen of the jury, that the President of the United States is bound to see that the laws are executed. Here is a case where his superintending care might be productive of some good—where, at the least, it would remove, or tend to remove, this burning shame upon the administration of justice in this city, and where it would tend to bring out to the public knowledge the facts which belong to this bloody occasion. You have been told that the Mayor of this city is bound to see that the laws are executed. Here is a case, which one would suppose falls within the scope of his official duty. He cannot, as probably the President may, plead ignorance in extenuation of his neglect, for he was present, and beheld the butchery. There are justices of the peace in this city, conservators of the peace, whose duty extends to apprehension and examination in criminal cases, but yet no enquiry has been made into the bloody deeds of the first of June. No Executive, no peace officer, no judicial officer having authority within the limits of this city, has interposed that authority to vindicate the outraged law and wipe the stain from the administration of justice.

Gentlemen, the faithful historian will note another fact, that in the face of these things that I have narrated, we stand here in the month of August, engaged in a protracted trial of parties charged with a misdemeanor! Men were killed, butchered, slaughtered, unoffending, inoffensive, guiltless of all charge, at a public place, assembled on a lawful occasion, under circumstances to make the responsible authors of their death guilty of felony, and we stand here to-day to defend these clients on a prosecution for misdemeanor! The District Attorney said that the Commissioners of election seemed more inclined to favor the "Plug Uglies" than the Military authorities. I am sorry to see that the prosecution stands here seemingly more inclined to favor murderers than those guilty of a petty misdemeanor. Was Allston lawfully killed? Does the law excuse his homicide, or justify it? Standing upon his own door sill, breaking no law, committing no riot, violating no peace, but standing there in the peace of God and under the protection of the law—he is slaughtered! Was his homicide justifiable or excusable? I profess gentlemen, to have some acquaintance with the criminal law, but I have yet to learn upon what principle of the criminal law, upon what rule of right or of justice an unoffending, peaceable citizen can be lawfully shot down. Upon what law is it that the homicide is to be justified or excused.

Well, gentlemen, no judicial investigation has been prosecuted by the city authorities into the circumstances attending this bloody tragedy, no military inquiry has been made into the conduct of the Marines who were the bloody actors, no military trial has been demanded by the officers in command, but one of those officers and some of the Marines have been called into this court and put on the witness stand on the trial of this case; and from their own lips, in the presence of this court, of this jury, the bar, and the audience, we have had testimony of that which makes them justly and legally the responsible authors of this felonious homicide. I say, gentlemen, the historian who recounts the occurrences of the first of June, will be untrue to his office if he fails to give a prominent place in that history to the events of this trial. The power of the United States, the power of your city government, with a knowledge of all the facts, because none can plead ignorance of them, passes by the felon and the murderer, and refusing an enquiry into that crime, yet stand here to-day prosecuting these defendants for a misdemeanor! A misdemeanor! It has a significance.

And here I must make my acknowledgments to the worthy gentleman who prosecutes for the United States for a caution which, in the outset of his remarks, he was good enough to give to this jury. Perhaps, gentlemen, it was not altogether unnecessary. His caution was to guard you against the liability of having your judgments warped by party considerations. This prosecution has arisen out of a contest between two political parties that divide the people of this city, each contending for control in the City Government, and no one I think who has breathed this atmosphere through the two weeks consumed by this trial, and observed its surroundings, can be insensible to the danger that the spirit that incited to the conflict may steal upon us here, and influence the verdict that must be rendered in this case. Nothing, gentlemen, according to my observation, controls so strongly the action of men as party feeling. It possesses every class in life. No condition is exempt. In political affairs it supplies all the senses through which we take cognizance of both moral and physical objects. We approve or condemn, not according to the dictates of dispassionate judgment, but by the Procrustean measure of its inexorable prescription.—In no country, to a greater extent than in our own, does party rage to such violent excess. It seizes upon the hustings, and every election, however considerable or insignificant it may be, whether legislative, executive, judicial, or even scientific and literary, is governed by its energy. It invades the halls of legislation, and the very laws under which we live spring from party combinations, and are fashioned to advance the party interests of those in the majority. It cannot surprise us, therefore, that the executive departments should partake of these vices. With enormous patronage to bestow, the means are at hand to reward the services of active leaders, to secure the fidelity of the household troops, and to attract recruits from the opposing ranks. Accordingly, we find that the only access to posts of honor and profit, is through a single path—that of party service. Nay, the humblest artizan in the workshop, the poorest laborer on your public works, as proof of his fitness to perform the work required at his hands, is obliged to repair on election day to the polls, and swell the ranks of the voters in the interests of those from whom he obtains employment. Gentlemen, I do not allege this as the peculiar vice of any one party. Unfortunately it is too common to all. But you who reside in this city, in the very presence of the Federal Executive, amid this host of governmental employees, must know from experience how true are the observations that I make, and how far short they fall of conveying a true impression of the condition of things that actually exist. Victorious over the ballot-box, triumphant in the halls of legislation, strong in executive power, emboldened by success, the demon intrudes his brazen face into courts of justice. But I trust never to see his hideous visage skulking behind the jury box. Let the court room be free. Let the fountain of justice not be polluted at its source. Let liberty not be assailed in its last entrenchment.

That this is to some extent a political prosecution, it is in vain to disguise; and if it is to be tried, gentlemen, upon party principles, we know how vain is the defence which we are engaged in making. For myself, I have never known party feeling to govern the verdict of a jury. I have seen it prevail elsewhere to a great extent, but I have never known it invade the jury box; and I will believe until the contrary is proved to me, that this jury is capable of withstanding the strong pressure from without that sets now against them, and that they mean to render a verdict in this case, in just accordance with the law and the evidence, and that they mean to give these parties a fair and impartial trial. I say I shall believe this until the contrary is demonstrated. I do not know, gentlemen, notwithstanding the introductory remarks of the prosecuting attorney, that I should have alluded to this topic, but for the course of the gentleman who was associated with us in the early part of the defence, [Mr. RADCLIFFE,] but who drew from us suddenly the other day. That gentleman has been for a long time a practitioner in this Court, and much accustomed to figure at criminal trials. Lately he has received an executive appointment in another Court. He was not content to withdraw in silence, but he sought the opportunity to make a speech. The pretext was to say something on behalf of a party for whom he had been specially retained, but it was soon apparent that his object was not so much to defend his client, for against him at that time no evidence had been given, proving any criminal connection with the riot, but to defend quite another person whom he unexpectedly found criminally arraigned; that person was himself, the crime being his engagement in the way of his profession, to defend one of the parties to this indictment. Gentlemen, his defence was addressed to his political friends; it was from his political friends therefore, that the accusation came. We learn that his defence was successful; on our part, we only regret that our clients lost the services of an advocate so adroit. For myself, I belong to neither of these parties. No combinations of either have ever embraced me. I stand here upon my professional responsibility, to defend these persons according to my best ability, without regard to the nature of the offence, the quarter from which the accusation comes, or the influences under which it is pressed forward. I am conscious of no feeling calculated to blind my judgment, or obscure my sight touching anything that belongs to the proper merits of the case, and I expect to argue it fairly and candidly. I shall make no rude assaults upon the feelings of any party implicated in it; but at the same time those who have figured most conspicuously in this transaction must submit to have their conduct criticised where criticism is just. I am no apologist for violence and lawlessness. My sentiments are all conservative. I would have the public authorities respected, and the laws observed, but to be respected, the public authorities must themselves be respectable. Properly to enforce the law, they must not transgress the law.

On the first day of June, under the provsions of your city charter, an election was to be held for certain municipal officers. Among other places appointed for holding that election, was the first precinct of the Fourth Ward. At an early hour of that day, a large number of persons, of foreign birth, said to be naturalized citizens of the United States, repaired together to that poll, and in a column exceeding a hundred in number, took possession of the polls. That, of itself, was an extraordinary spectacle, or rather, an extraordinary event. It may be material to inquire, what gave rise to it. We are not left altogether in the dark as to the origin of it, because we are told that it was brought about by a preconcerted arrangement. However discrepant the testimony may be on other points, however conflicting may be the proof and the witnesses in other respects, there is no conflict, no discrepancy here. This party of foreign voters did assemble at an early hour, and did press together in a body upon the polls, claiming priority of right to vote over all other persons. It could not have accidentally happened. That is impossible. It was the result of arrangement and concert—previous arrangement and previous concert. One witness tells us that there was a talk in the city previous to the election, that all such voters were to be voted in, in the early part of the day, and that those of the American party, if they voted at all, would have to vote in the afternoon, through a file of Marines. But we are not left, gentlemen, to speculate about the previous arrangement. We have it from one of the principal witnesses for the United States, who told us—he a Justice of the Peace, and a volunteer recipient of the commission of a policeman for that day—I mean Mr. Justice Donn. He, a Justice of the Peace, and, therefore, a peace officer—a special policeman, and, therefore, charged with other duties, stationed himself at the polls, busied himself in the conduct of the election—guarding, as he said, the outlet through which persons, when they had voted, passed off. Yet he tells us that he had taken special interest in these foreign voters, and was one of those who actively exerted themselves to bring them to the polls. He was an active, working partizan, busy in bringing up the Irish, and banding them together at the polls. A Justice of the Peace, whose office required impartiality—an officer of police, whose duty required equal impartiality, lent himself to these purposes, as one of the instruments by which this foreign array was marched to the polls; and he stationed himself at an important point, claimed to participate in the business of the election; and upon the stand he acknowledged the interest which he took in the vote of that class. Then, again, there was a Corporation officer named Owens, who told us that he performed the part of challenger on behalf of that party. It was his duty to be impartial and to stand aloof, between contending parties; but yet we find that he, with his associate Donn, was instrumental in the successful achievement of this preconcerted plan. These were not the only men. Goddard was there, another official, and a candidate himself for party favor. Thus, so far as arrangements were made on the part of the city authorities to preserve the peace, to keep order and quiet, and secure fair-dealing at those polls, you find it committed to men who stood in the condition of Donn, Owens, and Goddard—partizans in the contest, interested in its result—men, through whose agency this foreign legion had banded together and taken possession of the polls. I am not here, gentlemen, to question the right of a man to vote, because he had his birth in another jurisdiction. I am not here to question the lawful right of any naturalized citizen of the United States, having the local qualifications prescribed by your charter, to vote in your elections; nor am I to be understood as questioning the legal right of any one of that banded legion, if he possessed the qualifications, to cast his vote; but I do say this—that I know of no law, no consideration, civil or political, that entitled those foreign-born to privileges over our native-born. I have no sympathy with the sentiment, elsewhere expressed, that those whom poverty or crime has cast upon our shores, have greater rights to exercise civil or political privileges, than those whom Providence produced on our soil; but I do say that, when one of two political parties shall band together for the purpose of claiming priority of vote—shall band together, and in solid phalanx, take possession of a place of voting by an arrangement preconcerted, with design avowed before hand, it is calculated to lead to a disturbance, and to a breach of the peace, whether it is done by the native or by the foreign born. It must lead to disturbance. It must lead to a breach of the peace. So that in tracing, gentlemen, the origin of the morning riot, justice to the parties, and justice to this case requires us to begin our investigations at the threshold, so that we may find out the responsible authors, and lay at their doors the consequences, whatever they may be. I say it began in this foreign array. It was caused by these city officers who resorted to it as a means of signalizing their devotion to their party, or to achieve some private or party end. That was the beginning. After this thing had obtained for some time—we are left by the evidence uninformed as to the precise time—a party of strangers from Baltimore, who rejoice in the euphonious name of "Plug Uglies," appeared. Their number has been variously estimated by the witnesses, ranging from fifteen to twenty. The most reliable account of their number is that which we obtained from Mr. Merrill, who tells us they breakfasted at his boarding-house where he counted them at the table. He estimates them at fifteen. He says he followed them to the first precinct of the Fourth Ward, and that of the fifteen that were at breakfast only about ten or twelve went up to the voting place, and there they committed no breach of the peace; they stood out in the street as spectators of what was going on. They roamed about, sometimes speaking to a portion of the crowd at the polls, and then they walked off. No breach of the peace was committed. There was no disturbance, nor any attempted disturbance, nor any manifestation of a design to create a disturbance. In some fifteen or twenty minutes they came back increased in numbers, some citizens of this place having joined them. When they returned to the place of voting, this Irish legion was still large, and they divided themselves some one way and some the other. The greater part of them stationed themselves out in the street facing the polls. Then we are told they no longer remained quiet. What did they do? According to the testimony for the United States without reference to the testimony called for the defence—What did they do? They began to holloa, and to make a noise. Now we all know that on election days a good deal of liberty and license is allowed, but if every man were jerked up and prosecuted because he halloed and shouted, the whole time of the Court would be occupied with election cases. In my section of country election day is considered a free day, and I have often witnessed on that day a "free fight," but I never knew a prosecution arise out of it. A man has a right to halloo, I take it, for his candidate or his party; a right if you choose to be boisterous. English judges concede it in England; much more will his Honor concede it in this city. In times past I suspect his Honor had some acquaintance with these election matters; he will now be better prepared to tolerate these little irregularities, although he has put aside his political associations and assumed the ermine of justice. But I say that, according to the proof, when those parties returned to this precinct, all that they committed was a little bye-play in the street. Some of them were drunk it is said, some were hollooing, and some were a little disorderly, wrestling with each other, and occasionally there was a cry of "fight" or a sham fight as one witness said, and looking at the scene through the disordered medium of their jaundiced vision, they imagined that this was an attempt on the part of those persons to produce the appearance of a fight in the street, in order to give their comrades a better opportunity to rush upon the Irish. Now, a more far fetched supposition never entered the mind of any rational person. Why, Mr. Goddard was alone the active man to stop it, and if this crowd desired to rush in, how could he repel it? Was he Sampson? Had he the jawbone of an ass with which he was to slay all the Philistines? And yet he tells us upon the stand, as a witness under oath, that he believed it was the purpose of those parties to make a feint of a disturbance in the street, in order to attract his attention there, so that an opportunity might be got to rush upon the polls. I take it, gentlemen, from Mr. Goddard's own account, that there was nothing very uncommon transpiring in the street. A parcel of strangers from Baltimore, intermingled with some of the citizens of your own city, laughing, talking, shouting, hallooing, tusseling with each other, and some calling out "a fight," when in point of fact there was no fight. What did Goddard do? Did he do what an impartial officer would have done? Did he do what is proved to you that a respectable and impartial officer there then did? Did he look on quietly and composedly, and treat the matter as all such matters deserve to be treated, suffering it to pass unnoticed? No, Mr. Justice, policeman Goddard was a candidate for votes, a partizan in the contest. He was interested in the success of a particular party, and his interest overthrew his judgment, and pushed him on to action. He went out amongst those parties in the street. One of the U. S. witnesses represented him as seen with his hands up pushing them; some represent him as going into the crowd and collaring a fellow and swinging him round, then seizing another and doing the same. What right had he to seize any party thus rudely by the throat? If he finds a man breaking the peace, he has a right to take him into custody and carry him before a justice, but he has no right to treat men as the testimony shows he treated men that day. By doing so, he committed an assault upon the person so rudely seized. When they came towards the sidewalk, he stood there pushing them off, doing what all will agree, under the circumstances of the case, if he wanted to excite an affray, was the best possible mode of doing it. About this time, and during this time, words of badinage were passing in the crowd. One man, it is proved, addressing an Irishman enquired whether he had his papers with him? What was the answer? "He had a brick in his pocket." Another was seen to produce a knife, and in a moment a conflict ensues, stones and sticks were thrown and pistols fired.

Now, there is one thing that impresses me as an impartial observer, for though I am counsel in the case, I do not admit that I am incompetent to take an impartial view of it—and it must have struck the jury if they are impartial, and every other impartial man, to the prejudice of the United States witnesses who are called to testify in regard to that affray—that no one of them voluntarily told us that any person took part in the affray, but those who are called the assailants. They so shaped their testimony in giving an account of this affray, as to leave the impression that the assault was committed by one party without resistance from the other side. I say that struck me, gentlemen, as something most unfavorable to those witnesses. We put them through a course of cross-examination. It might have been an omission, a casual omission. We called their attention to it. We put the question; but we could not elicit from any one of them an admission that a pistol was fired by any of the opposing party, that a cudgel was used, a stone cast, or a blow struck. And they sought to produce the impression on this court and this jury, that those who were assaulted and their friends, positively submitted to the assault without resistence. I could not believe them, nor can this jury believe them. I do not charge them with wilfully swearing falsely. I make great allowance for Justice Donn, for that special challenger, and for police justice Goddard, and I would extend the mantle of charity over them. I will not follow the example of my worthy friend the District Attorney and censoriously impute crime to error; but still I say I cannot credit this statement, and in my judgment an impartial jury cannot credit it. There stood a column of near a hundred Irishmen, outnumbering the assailants; and they were not alone, they were not unsupported; of course not. As the contest partook of a party character it necessarily involved in its consequences individuals of that party in whose interests those Irish were brought to vote: is it then to be believed that under circumstances like these, in a crowd of persons thus promiscuously assembled of both parties, this assault could have been made and not be resisted; that blows on one side did not produce blows on the other? Credulity itself must reject it. The testimony on the part of the defence comes in here and proves what every man of rational mind would expect to have occurred—that this rush upon the Irish column produced a fight, blows were given as well as received, in point of fact a fight in which policeman Baggott, the Chief of Police, is proved, if not to have fired the first shot, certainly to have fired the two that followed the first shot. Blows were dealt on both sides, missiles flew both ways, it was a free fight, ending it is true in the route of the Irish. They had not muskets with bayonets at the point, charged with ball cartridge and three buck-shot to shoot into the unarmed crowd; and they ran. Now, gentlemen of the jury, that was the head and front of the first offending.—The District Attorney says it was a riot, I say it was an affray. It was an Irish shindy. Wherever you find the sons of Erin gathered together, you always find these shindies. This was produced, to some extent, by the conduct of Mr. Goddard; occasioned by the array of that foreign band and their position at the polls; excited by the retort of the Irishman, who said that he had not his papers in his pocket, but he had a brick. What was that but a challenge to a fight? Why, the brick in the Irishman's pocket was equivalent to the glove of the knight cast down to his adversary—a challenge to a tilt at arms. With the Irish it was at least a challenge to a shindy. Another fellow draws his knife, and some one exclaims, "there is a knife, wade in boys—jump in, boys; we have stood it long enough." And they did wade in. I am not here to justify or palliate this conduct. It was a violation of law, and the guilty parties ought to be punished for it. It is a great pity that you cannot go back and punish the parties who collected those Irishmen and brought them there under such circumstances. When you come to weigh the moral guilt which attaches in this case, the deepest stain will be found on them. But I say I am not the apologist for the assault; it was wrong; it was a violation of the peace; it was contrary to law; it was a violent affray, in which some were beaten and wounded, and it ended in a general flight. It was a great outrage; I agree to that; I am not here to defend it; but the question is, can you punish them for it under this indictment? I make that question; for, no matter how wrong they may have acted; no matter what turbulence was manifested; what law they infracted, you can only try them according to law—find them guilty according to law—and punish them according to law; and the moment you overstep the limits of the law, and visit them with punishment not according to the law, you break the law, disregard the solemn oath under which you sit in that box, and set an example fatal to security. We want the law executed fairly and impartially: we ask no more. If these men were proved guilty of murder, or of larceny, or robbery, can you find them guilty under this indictment? No. And why? Because the indictment charges them with riot, and you cannot inquire into an offence that is not charged in the indictment. That I have attempted already to explain to you. Now, gentlemen, can you find them guilty of a riot? A riot is charged in the indictment, but if the evidence proves that they were guilty of an affray, and an affray be not charged, you cannot find them guilty of that offence. If, then, this violation of the peace at the polls was, in contemplation of law, an affray and not a riot, however guilty these parties may be—however much they may deserve punishment—and I think they do deserve punishment—you break the law if you convict them; you make justice a mockery; and you invade the privilege of the defence which the law has secured to them.

Now, gentlemen, I propose to call your attention to the distinction between a riot and an affray: Offences are divided into various classes, and sometimes the line of demarcation is difficult to ascertain. The definition is certain—but when we come to apply the facts to the case it is often uncertain to what class of offence the particular case belongs. Thus we have homicide divided into felonious homicide, justifiable homicide and excusable homicide. Where the excuse is, where the justification is, and where they separate, it is often difficult to determine. A felonious homicide is divided again into murder and manslaughter; well known settled distinctions the law books give us; but still it is sometimes a most difficult thing to determine where to draw the line, and whether a particular state of facts makes a case of murder or reduces it to manslaughter. The leading distinction is, that murder consists of a homicide done upon premeditation with malice; manslaughter is a homicide committed without malice upon sudden heat. Here we have a riot and an affray, and the principle which distinguishes murder from manslaughter, now points us to the distinction between a riot and an affray. Murder must be upon premeditation; manslaughter is a killing without premeditation, from sudden heat. A riot is a disturbance of the peace upon concert, upon premeditation. The premeditation and concert, which in a case of killing, makes murder, in case of the disturbance of the peace, makes a riot. An affray is a disturbance of the peace, where persons engage in a fight upon a sudden occasion without premeditation. To make a riot, parties must assemble together unlawfully. It must be an unlawful assembly. They must assemble unlawfully and act upon premeditation. An affray is where the parties assembled, whether lawfully or unlawfully, make a combat out of some sudden provocation.

That is the difference, as defined by law, between a riot and an affray. That I may not be misunderstood, I turn to an authority which has been referred to by his Honor. I quote from Russell on crimes:

"A riot is described to be a tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature—and afterwards, actually executing the same, in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful."

A riot then is an assembling together on their own authority with a foregone intent. Now, what is an affray?

"Affrays are the fighting of two or more persons in some public place, to the terror of his Majesty's subjects. The derivation of the word affray is from the French, *effrayer*, to terrify; and as, in a legal sense, it is taken for a public offence, to the terror of the people, it seems clearly to follow that there may be an assault which will not amount to an affray: as where it happens in a private place, out of the hearing, or seeing of any except the parties concerned; in which case it cannot be said to be to the terror of the people.